

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRED GRAVES,,

Petitioner,

No. CIV S-04-1279 LKK GGH P

vs.

MIKE KNOWLES, et al.,

Respondents.

FINDINGS & RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 9, 2005, petitioner filed a motion for a temporary restraining order. Petitioner requests that prison officials be ordered not to transfer him for ninety days.

Petitioner believes that a transfer will harm his ability to proceed with his habeas corpus actions because he might be transferred to a place where the court would no longer have subject matter jurisdiction, and that petitioner needs to be close to those inmates who have assisted him in his litigations.

Although there may be a subject matter jurisdiction issue because petitioner would not be considered “in custody” for the prison disciplinary issues he seeks litigated in this habeas corpus proceeding, petitioner’s transfer from his present place of incarceration to another

1 institution will not affect the subject matter jurisdiction of this court. Assuming that petitioner's  
2 new custodian is located outside this district, this court would have jurisdiction over petitioner's  
3 case as long as he was "convicted" in this district. See 28 U.S.C. 2241(d). With respect to  
4 petitioner's desire not to be separated from those assisting him herein, the court finds that  
5 petitioner would not suffer irreparable harm on account of a transfer. Moreover, plaintiff has no  
6 right to be incarcerated only at that institution where it may be most advantageous to his interests  
7 in this litigation. Finally, the court will be able to adjudicate this nearly completely briefed case  
8 without problems occasioned by plaintiff's transfer.

9           ACCORDINGLY, petitioner's ex parte emergency request to stop his transfer  
10 should be denied.

11           These findings and recommendations are submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
13 days after being served with these findings and recommendations, any party may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
16 shall be served and filed within ten days after service of the objections. The parties are advised  
17 that failure to file objections within the specified time may waive the right to appeal the District  
18 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: 5/23/05

20  
21 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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